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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Fourteenth session

SUMMARY RECORD OF THE 16th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 9 May 1996, at 3 p.m.

Chairperson: Mr. ALSTON

later: Mr. CEAUSU

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The meeting was called to order at 3.20 p.m.

CONSIDERATION OF REPORTS:

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (agenda item 4) (continued)

Initial report of El Salvador (continued) (E/1990/5/Add.25; E/C.12/1995/LQ.8; HRI/CORE/1/Add.34)

1. At the invitation of the Chairperson, Mr. Kellman, Mrs. Escobar and Mrs. Alvarado-Overdiek (El Salvador) took places at the Committee table.

2. The CHAIRPERSON invited the Committee to resume its consideration of the list of issues (E/C.12/1995/LQ.8).

III. Specific provisions of the Covenant (arts. 6-15)

Article 6. Right to work (issues 11-14)

3. Mr. ADEKUOYE asked the delegation for information on technical and vocational training facilities, sandwich courses and careers guidance programmes available for school-leavers and young unemployed people.

4. Mr. SIMMA said he was disappointed by the brevity of the delegation's written reply to question 13 and asked for fuller details of the new agrarian reform programmes and the obstacles being encountered in their implementation. Land reform, after all, was essential to ensure lasting peace in Latin America.

5. Mr. TEXIER observed that the initial report had not been sufficiently comprehensive. It seemed more concerned to describe legislation, rather than to reflect the actual employment situation in El Salvador. What was the current unemployment rate and trend in El Salvador and was the informal sector taken into account in compiling statistics?

6. Privatization and free-trade zones were often highly profitable for businesses, but were known to have an adverse impact on employment, particularly among less skilled workers in the most vulnerable sectors of the population. The Committee required more precise details in reply to question 12 on the effects of the Government's privatization policy on employment levels. The Committee was well aware that the phenomenon of privatization was not exclusive to El Salvador; however, vague generalizations did not constitute a satisfactory response.

7. Mr. AHMED said that by "vulnerable sectors" he assumed Mr. Texier was referring to the indigenous inhabitants who formed 5.6 per cent of the total population. A 1995 United States Department of State report claimed that 90 per cent of the indigenous inhabitants lived in abject poverty with an average monthly income equivalent to half the legal minimum wage and few opportunities for gaining a supplementary income in the informal sector. He asked the delegation for more concrete details on indigenous unemployment, given that the overall employment situation in El Salvador was characterized

by great insecurity. During the second half of 1994, 756 public-sector workers and 227 private-sector workers had been made redundant; and the Ministry of Economic Affairs had announced that some 50,000 workers had been due to lose their jobs in 1994 alone as a consequence of the Government's privatization policy.

8. Mr. MARCHAN ROMERO shared his colleagues' concern about the real impact of privatization and modernization in the workplace. The Government's written response had been somewhat self-contradictory. They had cited retraining as a solution to loss of employment in the public sector, to be followed by immediate reabsorption of employees into private firms. Presumably, the privatization plan envisaged by the Government implied a reduction of State agencies, which would necessarily entail redundancies. The delegation had not explained what measures were being implemented to alleviate the adverse affects of privatization and modernization. Were public employees in El Salvador allowed to be contracted after they had been dismissed and compensated?

9. Mr. RATTRAY urged the delegation to explain how the Government of El Salvador viewed the importance of the right to work in comparison with other fundamental rights, such as the right to own property, and whether it was afforded equal protection. If the Covenant was to be seen as safeguarding the intrinsic dignity of a human being, then the ability and opportunity to work were vital. Were redundancy payments made if an employee's contract was terminated as a result of privatization? More importantly, did employees have a right to be reinstated in their former job? What measures protected an employee from unauthorized or unfair dismissal? The Committee believed that the right to work was as crucial as the right to own property, and in as much need of protection.

10. Mr. WIMER ZAMBRANO praised the concise, focused nature of the delegation's written replies, but asked for clarification of the terms "land holders" (tenedores) and "beneficiaries" (beneficiarios) in connection with questions 13 and 14. In response to issue 14 on forced labour, it was not enough merely to state that a committee of experts was acting on the recommendations of ILO. The latter had repeatedly asked the Government to adapt national legislation to the provisions of the relevant Convention, whether by repealing article 291 of the Penal Code or by exempting from prison labour all persons sentenced for participating in strikes or for breaching discipline at work. The delegation's claim that the existing law was not being applied at the present moment was not adequate. What was the Government's position regarding the aforementioned legislation which, from the standpoint of ILO and the Committee, was not in line with other progress made in human rights legislation in El Salvador?

11. Mr. AHMED also expressed the hope that the delegation would clarify the Government's position on forced labour in El Salvador. Like the right to work, the right not to be compelled to work must also be protected.

12. The annual report of the Inter-American Commission on Human Rights (1992-1993, OEA/Ser.L/V/II.83, p. 183) recognized that El Salvador had embarked upon the road to peace and democratic reconstruction. Success, however, would depend on addressing the roots of the conflict. Economic,

social and cultural rights must also be observed in practice. The threat of conflict would remain while sectors of the population continued to live in abject poverty. Protection must be afforded to peasant farmers who constituted the majority of the population and to former guerrillas and soldiers currently being reassimilated into civilian life. The Government and people should make decent housing, jobs, education and health their priorities. The problems would have to be resolved in situ. The drafting of beautifully worded legislation was not sufficient.

13. Mrs. JIMENEZ BUTRAGUEÑO suggested that the Government should focus on agrarian reform and expressed concern at the high level of redundancies following privatization, amounting to 10 per cent of jobs in the public sector. El Salvador was a party to ILO Convention No. 111 of 1958 on Discrimination (Employment and Occupation). How then could it allow the dismissal of workers and the subsequent employment of other workers in their stead?

14. Mr. Ceausu (Vice-Chairperson) took the Chair.

15. Mr. KELLMAN (El Salvador) reminded the Committee of the Government's objectives for economic and social development over the period 1994-1995, which were to include the modernization of the public sector with a view to promoting the private sector. Referring to Decree No. 471, he said that studies carried out in the public sector had revealed the need for greater efficiency in the State administration, which entailed reducing its size and reinvesting the savings in social projects to counteract the impact of the new policies. Other studies had shown that there was much job duplication in the public sector and that wages were higher than in the private sector. He pointed out that Decree No. 471 referred to jobs rather than employees. Consultants had advised those who had held superfluous jobs in the public sector to form cooperatives in order to carry out security and cleaning work on a sub-contractual basis. A governmental review body would soon be examining approximately 1,000 jobs. The Office of the National Counsel for the Defence of Human Rights had received reports from the Ministry of Labour on projects for determining which jobs were unnecessary, despite the quality of their incumbents.

16. In reply to Mr. Texier, he apologized for the lack of statistics broken down according to ethnic group. The Ministry of Economic Affairs would be asked to verify the figures.

17. Regarding vocational training, the private Foundation for Development had set up training centres offering courses in mechanics and construction, and the Government's manpower training plan also included courses to improve workers' employable skills and facilitate their entry into the labour market. The Government certainly regarded it as a priority, and as a social investment rather than a social cost.

18. Both the right to work and the right to own property were regarded as basic social functions under the Constitution. The need to work necessarily had priority, of course, and article 37, paragraph 2, of the Constitution guaranteed the right of all to work according to their capacities under conditions that ensured minimum, decent living standards.

19. The various commitments under the Peace Agreements would cost El Salvador an estimated 20 billion colones, a heavy sum for a developing country emerging from 12 years of civil war. His Government, however, recognized its obligation under any circumstances to invest in human development and also to compensate for the painful impact of privatization through short-term projects like those of the Social Investment Fund and the Department of National Reconstruction. El Salvador was slowly emerging from the severe economic crisis in the aftermath of the war, but as yet had no money for job creation and other needs. Alternative models had therefore been developed by which government agencies and the private sector cooperated in decentralizing the education and health sectors, for instance, and expanding their coverage. The downsizing of the public sector was not directed at specific individuals, but represented a streamlining of the administration that had been judged necessary after a series of technical studies. Decree No. 471 had been implemented to eliminate public-sector posts that were redundant under the new scheme of things, in which the State had a role as the facilitator of the private sector.

20. As to the distinction between the beneficiaries of land transfers and landholders under the 1992 Peace Agreement, "landholders" were defined as persons who had occupied and/or were working land without having title to it. They could subsequently become beneficiaries if they were granted title to that land under the land transfer programme. To assist the vulnerable class of landless peasants, land transfers were proceeding under the Peace Agreements, as stipulated in chapter V of the 1992 Agreement and as funds became available. Preference was being given to the resettlement of former army and FMLN combatants familiar with farming, and the programme also provided technical assistance, training, and farm implements, as well as basic temporary housing units, with some permanent housing supplied through foreign aid from Germany and the European Union and assistance from the Department of National Reconstruction and UNDP. The average size of lots ranged from 2 to 7 manzanas (approximately 3 to 12 acres) per person, depending on the quality of the land. Each beneficiary received 30,000 colones at 6-per-cent interest, to be repaid over 30 years. The land transferred was land voluntarily handed over by landowners to the Land Bank or State-owned farmland.

21. The whole procedure had proved to be very complex and had had to be rescheduled several times. A number of problems had been encountered: legal problems as to title, taxes, inheritance and the like; the refusal of some landowners to sell their holdings as stipulated in the Agreement and the consequent need to relocate beneficiaries; the constantly shifting designation of beneficiaries by their representatives; the fact that many beneficiaries did not know how to farm or had used the loans they had received from the Agricultural Development Bank for purposes other than farming; and the failure of most beneficiaries to begin paying back their loans. Consequently, the land transfer programme had not had the desired impact. Furthermore, the inherent problems on both sides of the programme were compounded by the huge cost of agrarian reform, to which El Salvador's budget could not be devoted entirely to the detriment of other urgent needs. The land transfer programme was therefore proceeding more slowly than the Government would wish.

22. The Government could deal only in the medium term with the staggering number of problems it had to resolve in connection with structural adjustmert,

land rights, employment, education, health, sanitation and other areas. Although the current Administration, which had been in power for only two years, devoted over 31 per cent of its budget to social programmes, at least five years would be needed before results would show. The aim must be to equip future generations to live decently and lead useful lives in society.

23. Mr. ALVAREZ VITA asked the delegation to comment on article 69 of the Ministry of Labour and Social Security (Organization) Act, which stipulated that no citizen could accept a contract to work outside the country - and the emigration authorities would refuse an exit permit - unless the Ministry of Labour first issued a permit ascertaining that the contract guaranteed the interests of the worker and the nation. He considered the provision to be in violation of article 13, paragraph 2, of the Universal Declaration of Human Rights guaranteeing the right to leave and return to any country, and also of article 6 of the Covenant guaranteeing the right to free choice of employment.

24. Mr. ADEKUOYE said that the issue of technical and vocational training had been addressed in dismayingly general terms. He would appreciate more details, along the very specific lines given in the Committee's guidelines, regarding what the Government was doing to provide vocational training, which was the only way to combat unemployment and the school-dropout problem.

25. Mr. AHMED reminded the delegation that it had not yet answered the questions on forced labour.

26. Mr. TEXIER asked the delegation to give at the subsequent meeting more specific answers on unemployment, how it had developed, the practical impact of privatization and the like. Also, among the vulnerable sectors he had been referring not only to the landless peasants but also to others, such as returning refugees and the huge numbers of demobilized former combatants on both sides.

27. Mr. KELLMAN (El Salvador) said that he would secure more information on vocational training programmes from his Government. With regard to article 69 of the Ministry of Labour (Organization) Act, although the Constitution did guarantee free movement into and out of the country, the Act had been drafted to protect Salvadoran workers who were exploited abroad by guaranteeing that they would receive a minimum living wage as foreign workers. The Government saw that as a matter of human dignity and the safeguarding of minimum human rights by avoiding situations of servitude abroad, rather than as a freedom-of-movement issue. It should be noted that the new Labour Code set up a tripartite Labour Commission, composed of government, business and trade-union representatives to deal with all such labour problems; it had been recognized as one of the most advanced bodies of its kind in Latin America.

28. Mr. ALVAREZ VITA, expressing surprise that an Act would be allowed to supersede the Constitution, which was itself superseded by the Covenant, said that if a Salvadoran wanted to emigrate, he should not be stopped. The provisions of the Ministry of Labour (Organization) Act recalled certain provisions in the legislation of former authoritarian regimes. Did El Salvador apply the Act also in cases where professionals sought to work

abroad? The motive behind the Act seemed Utopian and the Act itself an undemocratic anachronism. The delegation's answer had been very political and unrealistic.

29. Mr. AHMED said he wished to defend El Salvador's policy regarding the departure of its citizens; there were many cases of countries refusing to allow their citizens to go abroad. It had been done with nuclear physicists in possession of State secrets, mercenaries intending to fight against their country, criminals planning assassination missions against their head of State, and prostitutes.

30. Mrs. ESCOBAR (El Salvador) said that she had noted the Committee's comments regarding article 69 of the Ministry of Labour (Organization) Act and would transmit them to her Government. It was possible that the article did not meet present-day requirements.

Article 7. Right to just and favourable conditions of work (issues 15-18)

31. Mr. KELLMAN (El Salvador), replying to the question on legal measures to protect the occupational health of workers, and any consequent sanctions, said that labour issues were dealt with by the National Labour Council, which had been set up following the reform of the Labour Code.

32. The body which fixed and monitored minimum wages and adjusted them to cost of living increases was the National Minimum Wage Council made up of representatives from Government, employers' associations and trade unions. It reviewed the level of minimum wages periodically and adjusted them whenever necessary; a corps of inspectors verified that minimum wages were being paid.

33. As to whether agricultural workers enjoyed labour rights and how many were employed temporarily, he said that they enjoyed the same rights as other workers and that approximately 35,000 such workers were employed every year on a temporary basis. He would try to obtain a more precise figure and inform the Committee at a later date.

34. Mr. AHMED said article 38, paragraph 2, of the Constitution, set out in paragraph 35 of the report (E/1990/5/Add.25), stated that the minimum wage "must be sufficient to satisfy the normal home needs of a worker in their material, moral and cultural aspects", but that was clearly not the case. The minimum wage in El Salvador was much less than was required for a decent standard of living. A report compiled by an independent expert in 1995 had stated that there was a continued failure in El Salvador to protect economic and social rights and that, despite an increase in the minimum wage, it was not sufficient to meet the basic needs of the population. There had been numerous labour disputes resulting from workers' complaints about low wage-levels, threatened job losses due to privatization of State enterprises and the dismissal of union leaders.

35. Paragraph 6 of the same article of the Constitution stated that the number of hours of night work and work in dangerous or unhealthy tasks should be less than for daytime work and should be regulated by law, but that the limitation on working hours should not apply in cases of force majeure. He wondered what force majeure meant in that context, and what the following

sentence meant when it stated that the law should determine the extent of interruptions in working hours when, for biological reasons, the rhythm of work so demanded, and of the interruptions between two consecutive work days.

36. Mr. TEXIER said he would have welcomed more detail concerning the way the minimum wage was determined and adjusted. According to information he had received from a non-governmental human rights organization in El Salvador, the minimum wage in urban areas was 1,050 colones (US$ 120) and in rural areas 900 colones (US$ 100), while the basic basket cost more than 4,500 colones. The gap between the actual minimum wage and the minimum wage as required by the Covenant was thus clear. He asked what was being done to increase the minimum wage and, despite the difficult economic situation in El Salvador, to reduce the considerable shortfall between what it was and what it should be. He asked whether there were any workers who were paid less than the minimum wage, and if so whether sanctions were imposed on their employers.

37. The same source had suggested that working conditions in the free-trade zones, where employees worked up to 12 hours a day without a break and in arduous conditions, were at variance with the 8-hour day stipulated by the Labour Code. It was also suggested that night-differential was not paid and that wages were calculated on the basis of productivity, leading to sanctions being imposed on workers. In general, the report suggested that there was insufficient respect in El Salvador for workers' rights; it was his hope that the delegation would be able to give precise answers to the allegations made.

38. Mr. ADEKUOYE asked for details regarding the comparative level of remuneration in the public and private sectors and the extent to which wages varied for men and women. He also asked for statistics on accidents at work, details on any provisions that existed to enforce minimum health and safety standards at work, and whether there were areas of activity in El Salvador in which those minimum standards did not apply.

39. The CHAIRPERSON pointed out that article 38, paragraph 6, of the Constitution stated that ordinary daytime work should not exceed 8 hours and the working week should not exceed 48 hours, the maximum hours of overtime for each type of work being determined by law. He asked whether a law had been passed to determine the maximum number of hours of overtime for each type of work. As to the General Labour Inspectorate, was it an independent body and what powers did it have? Did the inspectors have the necessary authority to ensure that employers respected labour legislation and regulations?

40. Mrs. JIMENEZ BUTRAGUEÑO asked what the Government of El Salvador was doing to protect the wages and working conditions of employees, especially women, in the free-trade zones. What provision was made for their occupational health and safety?

41. Mr. KELLMAN (El Salvador) said that force majeure in terms of article 38, paragraph 6, of the Constitution meant natural disasters such as earthquakes and floods. The General Labour Inspectorate was not independent of the Government; it formed part of the Ministry of Labour. It received guidelines from the tripartite National Minimum Wage Council and National Labour Council, and if it detected anomalies, sanctions were specified in the Labour Code.

42. Employers operating in the free-trade zones, where certain exemptions existed regarding employment taxes, were subject to the basic labour legislation operating everywhere else in the country; if complaints were lodged and upheld, sanctions were available.

43. He would seek the information requested by Mr. Texier and Mr. Adekuoye from his Government, and provide it at a later stage.

Article 8. Trade union rights (issues 19 and 20)

44. Mr. KELLMAN (El Salvador) said in reply to the question why El Salvador had not yet ratified ILO Conventions No. 87 (Freedom of Association and Protection of the Right to Organize) and No. 98 (Application of the Principles of the Right to Organize and to Bargain Collectively), that article 47 of his country's Constitution established the right to form trade unions when it stated that "employers and private workers, without distinction as to nationality, sex, race, creed or political beliefs, [had] the right to associate freely for the protection of their respective interests, by forming professional associations or trade unions".

45. In answer to the request for more detailed information on whether union rights were recognized for all workers or whether there were limitations in some sectors, he cited article 8, paragraph 2, of the Covenant, which specifically did not prevent the imposition of lawful restrictions on the exercise of union rights by members of the armed forces, the police or the State administration. The Constitution of El Salvador banned public and municipal workers from taking strike action and abandoning their duties when those duties could not be performed by any other agency, in order to guarantee essential public services.

46. Mr. TEXIER said that the reply given to explain why El Salvador had not ratified ILO Conventions Nos. 87 and 98 merely confirmed that there had been practically no trade union freedom in El Salvador, and no tradition of collective bargaining. The Peace Agreements had provided for the establishment of an economic and social forum, which employers had at first been reluctant to have anything to do with. He wanted to know whether collective bargaining had become an integral part of the fabric of life in El Salvador in the four years since the Peace Agreements had been signed. The Constitution had stated in article 48 that employers had "the right to suspend work, without need of previous approval"; such lockouts were an anti-strike measure and constituted an important and fundamental problem. When an employer locked the workforce out, the firm usually closed down, only to reopen shortly afterwards with the re-hiring of the workforce, but with the exception of those whose activity - usually attempting to form a union - had provoked the lockout in the first place. He asked if any progress had been made in dealing with that issue.

47. The report also stated that members of union executive bodies must be Salvadorans by birth. Persons who had worked in El Salvador for some time should also be allowed to hold trade union office, and he requested the delegation to respond to the claim that El Salvador continued to engage in the repression of union activity.

48. Mr. AHMED said it appeared from his reading of the Constitution of El Salvador that workers in the public sector had the right to form trade unions but not to strike. A recent report of the United States Department of State described a situation in which, in law, public employees were denied the right to strike but, in practice, such strikes were tolerated and treated as legitimate. Reform was clearly taking place and the tacit acceptance of the right of public employees to strike should be recognized in law.

49. Mr. RATTRAY asked for a clearer explanation of the limitations on the right to strike.

50. Mr. ADEKUOYE said that he was interested in the right of employers to suspend work, the so-called "lockout". He would like more information, therefore about "Solidarismo", the employer-promoted organization model used in recent years to weaken the trade union movement in some Central American countries. He asked how much influence "Solidarismo" had in El Salvador and whether it was consistent with the provisions of the law or the Constitution. In what circumstances could the possible dissolution or suspension of unions, referred to in paragraph 37 of the report, take place? Were there any government bargaining facilities that could be put at the disposal of employers and employees in order to avoid strikes? He would also like further information on the number and structure of trade unions in El Salvador and statistics regarding work stoppages.

Article 9. Right to social security (issue 21)

51. Mr. KELLMAN (El Salvador) said that a compulsory system of social security had been established in El Salvador by the 1983 Constitution. It consisted of a health regime, governing insurance for sickness, maternity and occupational risks, and a pensions regime, covering invalidity and old age, both administered by the Salvadoran Social Security Institute and financed by contributions from workers, employers and the State. The Constitution also established an obligation on the part of the State to assist uninsured persons. Under the general health regime, which consisted of medical and financial benefits, pregnant women were entitled to paid leave for a period before and after giving birth and to retain their jobs. Penalties were set by the Labour Code for failure to observe those conditions and any dismissal of a pregnant woman worker was regarded as unjustified.

52. Mrs. JIMENEZ BUTRAGUEÑO said that, in question 21, the Committee had asked specifically what branches of social security existed in El Salvador and whether the protection afforded extended to workers of all kinds.

53. Mr. KELLMAN (El Salvador) said that a complete description of the social security system would be found in the annex to the report. Of the branches of social security listed in the question, medical care, sickness and maternity benefits, old-age benefits, disability benefits, benefits for survivors, meaning widows or orphans and including partial benefits in the case of second marriages, industrial accident benefits and family allowances all existed. Provision for unemployment benefits was not yet fully established.

Article 10. Protection of the family, mothers and children (issues 22-27)

54. Mr. KELLMAN (El Salvador) said that, since the formulation of the new Family Code, a great deal of work had been done in El Salvador, with international technical assistance and the participation of international and national organizations, to bring legislation relating to the family up to date. The new arrangements, including the Young Offenders Bill, had enabled El Salvador to be recognized by UNICEF as having one of the most modern systems of family law in the Americas. The system was in full conformity with the Convention on the Rights of the Child and with all the provisions of the Covenant. The Family Code incorporated the principles of equal rights of the spouses and of all children, born in or out of wedlock, and those principles were observed in practice. The secondary legislation referred to in paragraph 112 of the report had been abrogated and the "offensive terms" referred to in question 23 no longer appeared in the civil registers. With regard to education, the steps taken by the Government had resulted in a programme that was recognized as one of the best and most modern in Latin America. Family planning advice and assistance was provided by the health units administered by the Ministry of Public Health and Social Welfare. He noted that the organization "Profamilia" was not an autonomous institution but a private body which had been working with the Government in the field of family planning for some 25 years.

55. In connection with the dissolution of marriage through divorce, he drew attention to the provision under the new Family Code whereby a marriage was dissolved following the pronunciation of presumed death. Since absence for one or more consecutive years also constituted grounds for divorce under the Civil Code, marriage to a person who had disappeared could be dissolved either through a declaration of presumption of death or on grounds of de facto separation. As to steps to eliminate domestic violence, he drew attention to the establishment in March 1996 of the Institute for Women's Development. Further information would be made available regarding the functions and powers of the Institute.

56. Mr. TEXIER said that the adoption of the new Family Code was a very satisfactory development. He would, however, appreciate more information on the protection afforded to pregnant women and young children and on domestic violence. He would particularly like to hear more about the steps taken to prohibit child labour and whether any specific programmes were in place to assist street children.

57. Mrs. JIMENEZ BUTRAGUEÑO stressed the importance of education in dealing with the problem of domestic violence and asked whether penalties for violence against women had been increased.

The meeting rose at 6 p.m.